

## Message Text

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51

ORIGIN COME-00

INFO OCT-01 ARA-16 ISO-00 EB-11 SS-20 HEW-08 SCI-06 L-03

CIAE-00 INR-10 NSAE-00 RSC-01 EUR-25 /101 R

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ARA/ECP:ECOHEN

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R 212304Z NOV 73

FM SECSTATE WASHDC

TO AMEMBASSY LIMA

INFO AMEMBASSY BOGOTA

AMEMBASSY CARACAS

AMEMBASSY PARIS

AMEMBASSY LA PAZ

AMEMBASSY SANTIAGO

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E.O. 11652, N/A

TAGS: EIND, EGEN

SUBJECT: ANDEAN PACT: INDUSTRIAL PROPERTY

REFERENCE: A) LIMA 8450, NOV. 19, 1973

B) LIMA A-232, AUGUST 3L, L973

C) STATE 005342, JANUARY 11, 1973

1. REF (B) CONTAINS ON PAGE 2 UNDER TOPIC OF CURRENT STATUS A REFERENCE TO ARTICLE 5 AND ECUADOR OBJECTION TO THE NON-PATENTABILITY OF PHARMACEUTICAL PROCESSES. THE OTHER COUNTRIES STATED THAT PROCESS PATENTS HAVE BEEN ABOLISHED IN BRAZIL AND THE FEDERAL REPUBLIC OF GERMANY (FRG).

2. THIS IS TRUE IN BRAZIL. HOWEVER, AS OF JANUARY 1, 1968 IT HAS BEEN POSSIBLE TO ACQUIRE PATENT PROTECTION IN THE FRG FOR SUBSTANCES OBTAINED BY A CHEMICAL PROCESS. UNDER THE LIMITED OFFICIAL USE

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LAW, PATENTS ARE NOT GRANTED FOR CHEMICAL SUBSTANCES PER

SE BUT, IF A PROCESS IS CLAIMED FOR PRODUCING A CHEMICAL SUBSTANCE, THE PATENT PROTECTION EXTENDS TO THE SUBSTANCE SO PRODUCED. THE RULE APPLIES ALSO TO FOODSTUFFS, MEDICINES AND DRUGS. THE EEC PATENT CONVENTION (TO BE NEGOTIATED IN MAY 1974) CONTAINS PROVISIONS FOR A UNIFIED PATENT LAW FOR ALL NINE COUNTRIES. UNDER THIS CONVENTION MEMBERS WILL NOT BE PERMITTED TO TAKE ADVANTAGE OF CERTAIN RESERVATIONS PERMITTED UNDER THE EUROPEAN PATENT CONVENTION (1973) RELATED TO THE TERM OF A PATENT AND TO CERTAIN

EXCEPTIONS TO PATENTABILITY. IN THIS CASE ITALY, WHICH DOES NOT PERMIT THE PATENTING OF PHARMACEUTICAL PROCESS OR PRODUCTS, WILL HAVE TO ALTER ITS LAW TO CONFORM TO THE EEC CONVENTION.

3. ALSO ON PAGE 2, UNDER CURRENT STATUS, A REFERENCE IS MADE TO ARTICLE 6 IN WHICH VENEZUELA SUGGESTS DIFFERENTIAL TREATMENT BE GIVEN TO PATENTS OWNED BY FOREIGN AND DOMESTIC CORPORATIONS. THIS DIFFERENTIATION BETWEEN DOMESTIC AND FOREIGN PATENT HOLDERS WOULD IN OUR VIEW BE CONTRARY TO ESTABLISHED INTERNATIONAL NORMS OF CONDUCT. IN PARTICULAR IT WOULD GO AGAINST THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY TO WHICH SOME 80 STATES AROUND THE WORLD ADHERE. IT SHOULD ALSO BE NOTED THAT NONE OF THE STATES PARTY TO THE ANDEAN ARE MEMBERS OF THE PARIS CONVENTION.

4. THE EMBASSY SHOULD REVIEW REF. (C), WHICH CONTAINS COMPREHENSIVE AND STILL ACCURATE SUMMARY OF STATE, COMMERCE AND PATENT OFFICE VIEWS ON THE PROPOSED INDUSTRIAL PROPERTY REGULATIONS. IF ADDITIONAL INFORMATION IS REQUIRED WE WILL ATTEMPT TO PROVIDE IT.

5. REF (C) NOTED USG CONCERN ABOUT PROPOSAL FOR PROHIBITING USE OF FOREIGN TRADEMARKS AFTER JANUARY 1, 1977. REF (B) INDICATED THAT CHILE AND PERU ARE BACKING OFF FROM THIS IDEA, BUT COLUMBIA STILL SUPPORTING. THEREFORE, WE URGE EMBASSY TO REMAIN ALERT TO THIS POTENTIAL PROBLEM, TO REPORT ANY SIGNIFICANT DEVELOPMENTS, AND AT YOUR

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DISCRETION TO USE ARGUMENTS IN REF (C) TO OPPOSE THE PROPOSAL. KISSINGER

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Subject:** ANDEAN PACT: INDUSTRIAL PROPERTY  
**TAGS:** EIND, EGEN, PE, GE, ANDEAN PACT, EEC  
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